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For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

DOES I, et al., On Behalf of Themselves
and All Others Similarly Situated,

Plaintiffs,

v.

THE GAP, INC., et al.,

Defendants.

Case No. CV-01-0031

ORDER GRANTING
PLAINTIFFS' MOTION TO
RECONSIDER PORTIONS OF
OCTOBER 29, 2001 ORDER RE:
MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
COMPLAINT

Plaintiffs Does I, et al., move the court for reconsideration of its October 29, 2001 Order Re: Motion to Dismiss Plaintiffs' First Amended Complaint. Pursuant to Local Rule 7.1(g), the court deems this motion appropriate for decision without oral argument.

Upon consideration of the written arguments of counsel, the court hereby GRANTS plaintiffs' Motion for Reconsideration.

Plaintiffs move the court to reconsider three aspects of its October 29, 2001 Order Re: Motion to Dismiss Plaintiffs' First Amended Complaint: (1) the court's failure to address plaintiffs' allegations that the Commonwealth of the Northern Mariana Islands ("CNMI") law provides an alternative source of Racketeer Influenced Corrupt Organizations Act ("RICO") predicate acts; (2) the court's statement in its "Conclusion" (*See* Order, p. 54, ¶ 22) that dismissal of plaintiffs' Alien Tort Claims Act ("ATCA") claims was "with prejudice"; and (3) the court's

1 determination of the statute of limitations for plaintiffs' involuntary servitude and peonage
2 claims.

3 **1. CNMI statutory offenses can be RICO predicate acts.**

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5 Plaintiffs contend that in the court's October 29, 2001 order, the court analyzed in detail
6 each of the three categories of federal law RICO predicate acts alleged by plaintiffs, but failed to
7 address plaintiffs' RICO predicate acts arising under CNMI law. In ¶¶ 166-71 of their First
8 Amended Complaint, plaintiffs specifically allege defendants' violation of CNMI criminal laws
9 proscribing kidnaping, theft, theft of services, theft by extortion, receiving stolen property and
10 criminal coercion as additional RICO predicate acts.

11
12 Certain acts "chargeable under State law" may be RICO predicate acts. *See* 18 U.S.C. §
13 1961(1)(A). Defendants, relying mostly on principles of statutory construction, argue that the
14 acts specified in § 1961(1)(A), as codified under CNMI statutory law, do not constitute RICO
15 predicate acts because the CNMI is not explicitly included in the definition of a "state" under
16 RICO.¹ Defendants concede, however, that they have found no rationale as to why Congress
17 would choose to exempt CNMI statutory offenses as RICO predicate acts while including as
18 predicate acts the similar statutory offenses of all other United States territories and possessions.

19
20 RICO is applicable to the Commonwealth pursuant to § 502(a)(2) of the Covenant to
21 Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United
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23
24 ¹ "State means any State of the United States, District of Columbia, the
25 Commonwealth of Puerto Rico, any territory or possession of the United States, any
26 political subdivision, or any department, agency or instrumentality thereof." 18 U.S.C. §
1961(2).

1 States of America ("Covenant"), Act of Mar. 24, 1976, Pub. L. No.94-241, 90 Stat. 263 (1976),
2 *reprinted at* 48 U.S.C. § 1681. The definition of "state" under RICO includes "any territory or
3 possession of the United States." *See* 18 U.S.C. § 1961(2). The Ninth Circuit has held that the
4 CNMI is encompassed by the term "territory" under various statutes. *See Saipan Stevedore Co. v.*
5 *Dir. Workers' Comp. Programs*, 133 F.3d 717, 720 (9th Cir. 1998) (CNMI is plainly a United
6 States "territory" under the Longshore and Harbor Workers' Compensation Act); *Micronesian*
7 *Telecomms. Corp. v. NLRB*, 820 F.2d 1097, 1100 (9th Cir. 1987) (CNMI falls within the meaning
8 of "territory" under the National Labor Relations Act).² To interpret RICO as not encompassing
9 CNMI statutory offenses would seem contrary to both the provisions of the Covenant and the
10 broad scope of RICO. *See Sedima*, 473 U.S. at 498, 105 S.Ct. at 3286 (RICO is to be construed
11 liberally to effectuate the statute's remedial purposes). Accordingly, the Court finds that CNMI
12 statutory offenses may constitute predicate acts under RICO.

15 **2. Plaintiffs' ATCA claim is dismissed "without prejudice."**

16 Plaintiffs argue that their ATCA claim should have been given "without" prejudice
17 thereby giving them the opportunity to amend their ATCA claim. The court agrees and
18 that was its intent. The plaintiffs' ATCA claim is dismissed without prejudice and
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21 ² Defendants also cite *United States v. Bordallo*, 857 F.2d 519, 523-524 (9th Cir.
22 1988), in support of their argument that the CNMI is not encompassed by the term "state"
23 under RICO. In *Bordallo*, the court overturned a bribery conviction on the ground that
24 Guam was not a state for purposes of the federal bribery statute because the term "state"
25 was left undefined and the court had previously held that Guam is not included in the
26 meaning of the term state absent express congressional intent. Under RICO, Congress has
defined "state" and Congress' intent to include the CNMI is apparent from the use of the
phrase "any territory or possession" in the definition.

1 plaintiffs are given leave to amend.

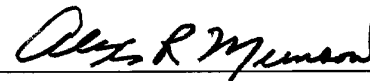
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3 **3. The court's analysis of the involuntary servitude and peonage statutes of**
4 **limitations is withdrawn.**

5 Plaintiffs contend that because the statute of limitations issue regarding plaintiffs'
6 claims of involuntary servitude and peonage was not raised by any of the motions to
7 dismiss and neither party briefed or argued the issue, the court's discussion of this issue in
8 its October 29, 2001 Order should be stricken. Defendants agree that arguments in the
9 briefs were made in the ATCA context and accordingly, the court will entertain this issue
10 at a later time if necessary. The court hereby withdraws its discussion of the statutes of
11 limitations issue appearing on page 48 of its October 29, 2001 Order Re: Motion to
12 Dismiss Plaintiffs' First Amended Complaint.

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14 Accordingly, plaintiffs' Motion for Reconsideration is GRANTED in all respects.
15 For the convenience of all parties, the Order of October 29, 2001, is hereby withdrawn in
16 its entirety and a new order that conforms to this Order will be filed today.

17 IT IS SO ORDERED.

18 Dated this 26th day of November, 2001.

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21 
22 Alex R. Munson
23 Judge
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